REMARKS

Reconsideration and allowance in view of the foregoing amendment and the following remarks are respectfully requested.

Rejection of Claims 1, 3, 5-7, 9-10, 14, 16, 18-20, 22-23, 27 and 28 Under 35 U.S.C. §103(a)

The Office Action rejects claims 1, 3, 5-7, 9-10, 14, 16, 18-20, 22-23, 27 and 28 under 35 U.S.C. §103(a) as being unpatentable over Frerichs et al. (U.S. Patent No. 6,684,249) ("Frerichs") in view of Greer et al. (U.S. Patent No. 5,978,828) ("Greer et al."). Applicant respectfully traverses this rejection and respectfully submits that one of skill in the art would not have sufficient motivation or suggestion to combine Frerichs et al. with Greer et al.

To establish a *prima facie* case of obviousness, the Examiner must meet three criteria. First, there must be some motivation or suggestion, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to combine the references. Second, there must be a reasonable expectation of success, and finally, the prior art references must teach or suggest all the claim limitations. The Examiner bears the initial burden of providing some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." MPEP 2142.

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). MPEP 2143.01.

Furthermore, if the examiner determines there is factual support for rejecting the claimed invention under 35 U.S.C. 103, the examiner must then consider any evidence supporting the patentability of the claimed invention, such as any evidence in the specification or any other evidence submitted by the applicant. The ultimate determination of patentability is based on the entire record, by a preponderance of evidence, with due consideration to the persuasiveness of any arguments and any secondary evidence. *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The legal standard of "a preponderance of evidence" requires the evidence to be more convincing than the evidence which is offered in opposition to it. With regard to rejections under 35 U.S.C. 103, the examiner must provide evidence which as a whole shows that the legal determination sought to be proved (i.e., the reference teachings establish a *prima facie* case of obviousness) is more probable than not. MPEP 2142.

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art, and all teachings in the prior art must be considered to the extent that they are in analogous arts. Where the teachings of two or more prior art references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art, considering the degree to which one reference might accurately discredit another. *In re Young*, 927 F.2d 588, 18 USPQ2d 1089 (Fed. Cir. 1991). MPEP 2143.01.

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

With these principles in mind, Applicant submits that, as shall be seen next, when an objective analysis of the suggested power of each of these references is analyzed that, by the preponderance of the evidence, one of skill in the art would not have sufficient motivation or suggestion to combine these references.

The Office Action on pages 3 and 4 appropriately concedes that Frerichs et al. fail to teach determining when stored program information is out of date and further comprises transmitting a query to determine a time of a latest update of the stored performance information, receiving the time of the latest date of the stored performance information, responds to the transmitting of the query, accessing a timestamp of stored performance information and determining whether the timestamp of the performance information matches the time of the latest update of the stored performance information. The Office Action then asserts that Greer et al. teach querying to receive update information to determine a time of the last update/modification and accessing the timestamp of the webpage object to determine if the stored object has been updated. The Office Action then jumps to the conclusion on page 4 that it would be obvious to one of skill in the art at the time of the invention to combine Frerichs et al. with Greer et al. for "the purpose of determining that stored data is old or out-of-date by comparing latest update times and timestamps." The Office Action further asserts that timestamping and maintaining the date and time of data modifications are common techniques. Applicant notes that there are substantial differences in the fundamental teachings of Frerichs et al. and Greer et al. such that they actually teach away from their combination.

Next we discuss Frerichs et al. As is introduced in the title and abstract this reference teaches a method of inserting advertisements into streaming audio for transmission over wide area networks. As we shall see, the fundamental principle which is found throughout the teachings of Frerichs et al. is this concept of streaming audio. For example, streaming audio is highlighted in the background of the invention in the first paragraph in column 1, line 13, as well as in the summary of the invention in column 2, line 13. As the inventors in Frerichs et al. continue to discuss the primary embodiment of the invention, they teach streaming audio in the context of on-line radio stations. For example, in column 4, starting at line 18, they discuss how

radio stations such as BBC, WKRZ, KQED and so forth can have servers that can be coupled directly to the network through a client network. In each of the servers are coupled to the radio station, which has a larger depository of music and/or audio information that can be communicated to the Internet and finally to the client device. The audio data either from an analog feed from the radio station or from digital audio files is provided through streaming media software. The streaming media software provides the audio data to clients which request a connection to the audio data. The streaming media software sends the encoded audio to the client as a sequence of data packets. The client receives the packets and can decode the packets and then play the audio content.

The invention of Frerichs et al. is the concept of inserting advertisements into this streaming audio for output at any one of the client devices. Other information can also be inserted into the streaming audio at a server and in addition such advertisements can be inserted into the streaming audio from an advertisement server which can store advertisements. The advertisements can be sent using a broadcast model where the advertisements can be distributed to a group of users or may be sent to a targeted group of users. See column 4, lines 44-57. Other references to streaming audio can be found at column 6, line 35 and line 44. Further discussion of the radio station servers is found in column 7. Automation software is discussed which can be used by the radio stations to organize station programming and scheduling such that daily programming may be automated except for live voice segments which may be provided manually, column 8, lines 41-63. As can be seen, the basic principle of Frerichs et al. relates to providing an advertisement in the context of streaming audio. One of skill in the art would certainly recognize that if a person is accessing a radio station audio stream, that the suggestive power of Frerichs et al. is limited to the idea of receiving this continuous stream of audio. As such, there is no need or suggestion for a need within Frerichs et al. of identifying out of date

data because the express teachings of Frerichs et al. require that the streaming audio either be live or with only a slight delay which may be due to latency in the network. See column 7, line 59, through column 8, line 5. Accordingly, rather than providing any kind of suggestion or motivation for combining with Greer et al., Applicant would respectfully submit that Frerichs et al. actually teach and suggest exactly the opposite, which is there is no need for an identification of out-of-date material because in a live audio stream there is no such material.

In contrast to the streaming audio concepts taught in Frerichs et al. are the teachings of Greer et al. This reference clearly focuses on providing notification of content changes on webpages. The method as taught in the abstract includes the step of transmitting a request from an electronic system to another electronic system for a quotient value that is indicative of content change on a website and transmitting the quotient value from the second system to the first system. Results of the concept of comparing the quotient value to a predetermined value to determine whether a threshold is triggered and notifying the first system of the content change if the threshold is triggered. As introduced in column 1 of Greer et al., because the World Wide Web is a large collection of webpages that are linked by the Internet, there is a large amount of information on the web and much of that information can become stale or old. Thus, they introduce the problem of when webpages are being constantly updated with new information there is no feature or mechanism that provides an indication of whether, when or how much the content of the webpage has changed. Accordingly, Greer et al. identify the need in the art for an apparatus to provide an update notification of webpage content or location changes using existing mechanisms. Therefore, their invention focuses on what was introduced above, which is providing a notice and a quotient that is associated with content change on a webpage. Applicant further notes that clearly the express teachings and further all implications of the teachings of Greer et al. relate to visual objects. For example, one of their object description fields 324

describes webpage objects such as the type, for example a gift file, the size of the object, the nature of the change and so forth. See column 4, lines 15-20. Throughout the teachings of Greer et al. are found references to visual objects, object types, HTML code, text and so forth. There is no hint or any suggestion that the update notification of content can relate to anything other than visual object. Accordingly, the suggestive power of Greer et al. clearly appears to be limited to visual objects on webpages that can become stale such that a user needs some type of notification regarding content changes on that website. As discussed above, Frerichs et al. because their teachings focus on live or nearly live streaming audio, the issue of stale content is irrelevant and it would certainly not come to the mind of one of skill in the art of any kind of need like that which is identified in Greer et al. Accordingly, for these two references to be blended the fundamental principles of one or both of the references would have to be altered either so that Greer et al. no longer teach about streaming audio but would have to change completely in order to even accommodate the concepts of Frerich et al. related to content changes of webpages and content becoming stale. Similarly, the teachings of Greer et al., beside being completely unnecessary, would have to be dramatically altered to be applied in the context of live streaming audio and even in the context of a slight latency in the streaming audio stream there is still a complete lack of any type of update notification information as is the focus of Greer et al.

Accordingly, for the forgoing reasons, Applicant respectfully submits that the preponderance of the evidence is quite clear in this case that one of skill in the art would not have sufficient motivation to combine these references. Accordingly, claims 1, 3, 5-7, 9-10, 14, 16, 18-20, 22-23, 27 and 28 are patentable and in condition for allowance.

Rejection of Claim 29 Under 35 U.S.C. §103(a)

The Office Action rejects claim 29 under 35 U.S.C. §103(a) as being unpatentable over Callahan et al. (U.S. Patent No. 6,665,688) ("Callahan et al.") in view of Sitrick (U.S. Patent No. 6,425,825) ("Sitrick"). Applicant respectfully traverses this rejection and submits that one of skill in the art would also not have sufficient motivation or suggestion to combine Callahan et al. with Sitrick. The Office Action on page 7 asserts that it would be obvious to one of ordinary skill in the art at the time of the invention to combine Callahan et al. with Sitrick for the purpose of providing updates for pseudo-live performance data while integrating the pseudo-live performance data with other data and implementing voice synthesis. Applicant respectfully traverses this and asserts that when the suggestive power of each reference is properly analyzed that these references are non-analogous to each other and that one of skill in the art would not have motivation to combine.

First, we turn to Callahan et al. which teach a replay method and system for monitoring the generation of a data set from input data sets. When the data set is subsequently accessed they teach automatically regenerating the data set if the data set is out of date. A reply system only regenerates those data sets that are determined to be out of date and only regenerates the output data set if it is determined to be out of date. They then teach that the data set is determined to be out of date only when an input data set is actually changed since the data set was last generated. See abstract. As introduced in the background section of the invention in column 1, starting at line 13, Callahan et al. explain that their invention addresses computer systems that are used to generate vast amounts of data. They reference an example complex computer system such as management information system (MIS) for a large organization. They explain that the MIS may click raw data that is generated at various locations throughout the organization and may have a variety of report generating tools and input subsets of the raw data that may generate reports.

They further discuss on line 45 that another complex computer system is a development environment for computer programs. The development environment allows programs to write, compile, debug and maintain computer programs. The development environment may use a word processor to generate the source code for the computer program, a parser to generate an intermediate representation of the computer program from the source code, a translator to generate object code from the intermediate representation, an optimizer to generate optimized object code from the object code and a linker to link optimized code from different functions to executable code. Accordingly, in sum, Callahan et al. identify that if all the input that is used to generate an output or some sort kind of intermediate representation was not written since the output was last written, then the tool that may be used in a programming environment does not need to regenerate the output because it is already up-to-date. If, however, they identify that one of the inputs was written after the output was last written, then the output may be out of date and the tool needs to regenerate the output. Although such tools help to reduce the time needed to generate the executable code it would be desirable to further reduce that time. Accordingly, the invention of Callahan et al. addresses this problem and provides the replay method used for monitoring the generation of data sets from input data sets and when the data set is subsequently accessed they automatically regenerate the data set if the data set is out of date and so forth.

In Sitrick, the title states that his invention relates to a user image integration and tracking for an audiovisual presentation system and methodology. The very first sentence of the abstract introduces an amusement park entertainment system that integrates the image of a patron into an audiovisual presentation. The figure on the cover of this patent shows an amusement park game with the various knobs 310, 340 and other inputs which enable the user to play the amusement park game. See also Figure 5A. Applicant respectfully submits that immediately upon reading the abstract one of skill in the art would recognize that the teaching of Callahan et al. and the

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teachings of Sitrick are in completely different International classes and completely different contexts. Whereas Callahan et al. focus on large complex databases associated with large organizations such that they need a management information system, immediately upon studying Sitrick we identify that it simply relates to amusement park entertainment systems. Applicant respectfully submits that for this reason alone that one of skill in the art would certainly not be motivated to further study these references for further information or to combine them.

The same problems continue as you continue to study Sitrick. For example, in the background of the invention in column 1, line 64, he continues to introduce that video games and cartridge video games were the outcome is variable based on user input are popular forms of entertainment. In column 2, line 8, he continues to discuss that some amusement parks provide video entertainment by playing old movie clips incorporating select audio members. A live camera captures the audio member in front of a blue background. The blue color is filtered out of the signal from the audience member camera and the camera is combined with the video signal of the old move clip. This gives the impression that the audience member is acting in the old movie video clip. All this is typically is done in real time. Then he identifies that the problem with this approach is that a complete setup is needed such as video camera, a blue screen, a composing computer system, etc. and the incorporation of the audience member is crude in that the audience member's image overlays the movie clip and is not blended into the movie. Using this approach, there can be no realistic interaction between the audience member and the cast in the movie clip. Accordingly, Sitrick identifies that there is a need in the entertainment system that facilitates realistic integrating a user's image into a video presentation or video game. His invention, therefore, is introduced in how this can be addressed. Applicant respectfully submits that it is clear that these two references are in entirely different International classes, focus on entirely different subject matter and that it is doubtful and certainly by a

preponderance of the evidence one of skill in the art would not have sufficient motivation to legally combine these references. Accordingly, Applicant respectfully submits that claim 29 is patentable and in condition for allowance.

CONCLUSION

Having addressed all rejections and objections, Applicant respectfully submits that the

subject application is in condition for allowance and a Notice to that effect is earnestly solicited.

If necessary, the Commissioner for Patents is authorized to charge or credit the **Law Office of**

Thomas M. Isaacson, LLC, Account No. 50-2960 for any deficiency or overpayment.

Respectfully submitted,

Date: January 18, 2007   By: _____

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